

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

MICKEY RAY TAYLOR, JR.,

Plaintiff,

v.

1:20-cv-00536-DHU-JMR

CITY OF CARLSBAD, New Mexico;
TREY THOMPSON, City of Carlsbad Police
Officer; and ARTESIA GENERAL HOSPITAL,

Defendants.

PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

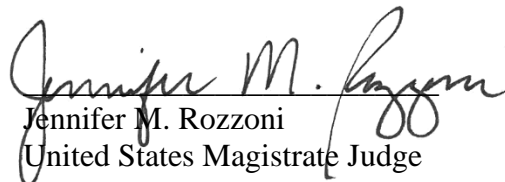
THIS MATTER is before the Court on plaintiff's Renewed Motion for Clerk to Enter Default Judgment, filed on February 8, 2023. Doc. 55. Defendant Trey Thompson filed a response. Doc. 56. Plaintiff did not file a reply, and the time for doing so has now passed. *See* D.N.M. LR-Civ. 7.4 ("a reply must be served and filed within fourteen (14) calendar days after service of the response"). On March 14, 2023, United States District Judge David Urias referred this case to me pursuant 28 U.S.C. §§ 636(b)(1)(B) and (b)(3), to conduct hearings, if warranted, and to perform any legal analysis required to recommend to the Court an ultimate disposition. Doc. 60. Having considered the briefing, the relevant law, and the record in this case, I conclude that plaintiff's motion is not well taken, and I recommend that the Court deny it.

Plaintiff asks the Court to "order the clerk to enter default in this cause at this time." Doc. 55 at 1. Plaintiff argues that he is entitled to a default judgment because his case has not moved "toward finality" in the past year—discovery has not taken place and dispositive motions have not been filed—despite no stay being issued in this case. *Id.* While not

unsympathetic to plaintiff's frustration with the lack of movement in his case, this lack of progress does not entitle plaintiff to a default judgment.

A default judgment is only available "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend." FED. R. CIV. P. 55(a). In the instant case, there is no evidence that Trey Thompson, the only remaining defendant, has failed to plead or otherwise defend. Indeed, he filed a response opposing plaintiff's renewed motion. Doc. 56. Further, plaintiff previously filed two motions requesting default judgment against defendant Trey Thompson. *See* Docs. 30, 44. The magistrate judge recommended that these motions be denied. *See* Doc. 46. The district judge adopted the magistrate judge's recommendations. Doc. 53. Plaintiff does not raise any arguments in the instant motion that would merit the Court revisiting this issue for a third time. I therefore recommend that the Court deny plaintiff's motion with prejudice.

THE PARTIES ARE FURTHER NOTIFIED THAT WITHIN 14 DAYS OF SERVICE of a copy of these Proposed Findings and Recommended Disposition they may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636(b)(1). Written objections must be both timely and specific. *United States v. One Parcel of Real Prop., With Buildings, Appurtenances, Improvements, & Contents, Known as: 2121 E. 30th St., Tulsa, Oklahoma*, 73 F.3d 1057, 1060 (10th Cir. 1996). A party must file any objections with the Clerk of the District Court within the fourteen-day period if that party wants to have appellate review of the proposed findings and recommended disposition. Failure to file timely and specific objections will result in waiver of *de novo* review by a district or appellate court. In other words, if no objections are filed, no appellate review will be allowed.


Jennifer M. Rozzoni
United States Magistrate Judge